

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

DOCKET FILE COPY ORIGINAL

In the Matter of )  
)  
Closed Captioning and Video Description ) MM Docket No. 95-176  
of Video Programming )  
)  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
)  
Video Programming Accessibility )

RECEIVED  
DEC 10 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

REPLY TO OPPOSITIONS TO THE PETITION FOR RECONSIDERATION OF  
THE ASSOCIATION OF  
AMERICA'S PUBLIC TELEVISION STATIONS

The Association of America's Public Television Stations ("APTS")  
submits its reply to the oppositions filed in response to the APTS petition for  
reconsideration of the Commission's Report and Order adopted August 7, 1997,  
in the above-captioned proceeding ("Closed Captioning Order").<sup>1</sup>  
As made clear in its petition, APTS supports the Commission's adopted  
captioning rules, but requests reconsideration of one aspect of the  
Commission's decision on exempt programming. APTS requests that the

<sup>1</sup> *Report and Order*, MM Docket No. 95-176, FCC 97-279 (August 22, 1997). The Commission's Order adopts rules implementing the closed captioning requirements set forth in Section 713 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). APTS has participated throughout this proceeding and filed comments in response to both the Commission's *Notice of Inquiry* and subsequent *Notice of Proposed Rulemaking*. *Notice of Inquiry*, MM Docket No. 95-176, FCC 95-484, 11 FCC Rcd 4912 (1996); *Report*, MM Docket No. 95-176, FCC 96-318 (released July 29, 1996), summarized at 61 Fed. Reg. 42249 (August 14, 1996); *Notice of Proposed Rulemaking*, MM Docket No. 95-176, 12 FCC Rcd 1044 (1997).

No. of Copies rec'd  
List ABCDE

0411

Commission exempt from captioning requirements instructional ("ITV") programming offered by public television stations to elementary, secondary, and post-secondary schools. APTS' reply is directed to the opposition by the Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing ("COR") and the joint opposition of the Counsel for the National Association of the Deaf ("NAD") and the Consumer Action Network ("CAN") (herein referred to as the "Opponents"), which oppose, *inter alia*, APTS' requested exemption.

As made clear in the APTS petition, one of public television's core missions is to provide educational, informational and cultural programming and related services to the unserved and underserved of our nation. Public broadcasting stations are committed to making their programming accessible to all audiences, and public television has taken a leadership role in making its programming accessible to hearing impaired persons. However, given the limited operating budgets of most public television stations and the significant costs involved in closed captioning, lack of financial resources is often a barrier to public television stations' realizing their commitment to captioning their programming.<sup>2</sup>

As the APTS petition states, a large percentage of the instructional materials broadcast by public television stations on their over-the-air channels are currently captioned, including nearly all of the PBS Ready-to-Learn and K-12 instructional programming, and approximately two-thirds of the PBS Adult Learning Services programming. APTS' petition addresses non-PBS ITV programming carried by the stations on their over-the-air

---

<sup>2</sup> Approximately one-third of all public television stations operate with budgets of under \$3,000,000. Indeed, the entire public television industry - including the costs of programming, educational services, salaries and facilities - operates on approximately six percent of the revenues available to the commercial broadcast television industry.

channels for K-12 in-school use and for post-secondary school course credit. This programming is often produced by public television station university or college licensees or by consortia of public television educational licensees for use on a local or regional basis.

The Opponents include three reasons for requesting Commission denial of APTS' proposed exemption for this ITV programming. First, Opponents contend that the economic burden of captioning local ITV programming will be relieved through other mechanisms, including the exemption provided by the Commission for providers with annual gross revenues of less than \$3 million, and the cap set at two percent of annual gross revenues for captioning expenses (COR Opposition, at 3). These mechanisms will not address the financial burdens of captioning ITV programming for all public television stations. While some public television station licensees producing and broadcasting instructional programming may fall within the parameters of this revenue exemption and financial cap, many others will not.<sup>3</sup>

For example, as noted in APTS' petition, the University of Houston, which produces three to four hours of ITV programming per day, broadcast to its enrolled students, would not fall within the \$3 million financial exemption. Similarly, the majority of telecourses broadcast by the University of Utah, Salt Lake City (whose station would not fall within the \$3 million exemption) are live, real-time closed circuit courses delivered to small groups of its students. To closed captioned these courses would double the cost of delivery and would have a devastating effect on the university's ability to

---

<sup>3</sup> Further, the local production exemption will not apply to most of this instructional programming. Instructional programming has repeat value, and therefore does not comply with the local production exemption which requires no repeat value.

offer these telecourses. Washington State University, Pullman, whose station narrowly misses the \$3 million exemption, broadcasts 140 telecourses to its students each year. Captioning this programming would be a tremendous financial burden to the university and would greatly impact its ability to provide these courses.

Second, Opponents contend that existence of other federal laws that address requirements of access in the classroom, including the ADA, IDEA, and the Rehabilitation Act,<sup>4</sup> "provides the most compelling reason" for the FCC not to grant an exemption for ITV programming (NAD/CAN Opposition, at 2). These federal laws, designed to provide access for the disabled, contain provisions allowing for flexibility in means of access and provide entities with the ability to determine that captioning a program is not feasible, if it would fundamentally alter the program or service or result in undue financial and administrative burdens. Contrary to Opponents' contention, the co-existence of these federal laws that provide entities flexibility in providing access in the classroom and allow for certain exceptions substantiate, rather than negate, the need for an exemption for ITV programming. Opponents' interpretation contradicts the intent of these laws—to allow for exceptions in cases in which the economic or administrative burdens of captioning are too great.

In fact, in deciding to exempt ITFS programming from its captioning requirements, the Commission relied on the existence of other federal laws that require that accommodations be made to make ITFS programs accessible

---

<sup>4</sup> Title II, Sections 201-205 of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12131-12134; Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794.

in the classroom—as well as the fact that ITFS recipients are specific educational receive sites and not the general public (Closed Captioning Order, ¶159). As APTS' discussed in its petition, there is no legal distinction between ITV and ITFS programming. Like ITFS, ITV programming broadcast in connection with educational institutions is covered by other federal laws that require the accommodation of disabilities on a more individualized basis. As with ITFS, public television's ITV programming is broadcast for students in connection with a specific educational institution and not intended for reception by the general public.

Lastly, Opponents contend that the universal service provisions, contained in Section 254(h) of the Telecommunications Act of 1996, require that the FCC mandate the captioning of instructional programming, as the failure to do so "will deny school children and college aged individuals the same learning opportunities as their nondisabled peers" (NAD/CAN Opposition, at 4). While APTS is fully cognizant of the importance of access in schools, the universal service provisions of the 1996 Act cannot be relied upon as legal authority for mandating captioning of ITV programming. Congress enacted Section 254(h) to ensure that modern technologies are used to make telecommunications services universally available to our nation's children through public schools and libraries:

The ability of K-12 classrooms, libraries and rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans—rich and poor, rural and urban. They are

intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools and libraries.<sup>5</sup>

In its Universal Service Order, the Commission included broadband video facilities within the scope of advanced telecommunications services that qualify for discounted rates. This will allow schools greater access to those educational services now being provided to classrooms by public television, including ITV programming.<sup>6</sup> Mandated captioning of this programming will reduce classroom access to such services. The public television stations that cannot bear the costs of captioning the ITV materials will either scale down or eliminate production of instructional programming. As made clear in the APTS petition and acknowledged in the Commission's Closed Captioning Order (§ 76), production of ITV programming is typically done with very small production budgets. A requirement to caption this programming will, in most cases, be economically burdensome to the stations involved, and very likely will result in the loss of such programming to the very students that Congress intended should have access to ITV services.

### Conclusion

Public television continues to be dedicated to its mission of equal access to its programming and services by all people. However, financial constraints impede public television stations' ability to fully caption all locally produced ITV programming. Therefore, APTS requests that the Commission balance the needs for captioning against the realities of public television funding, and

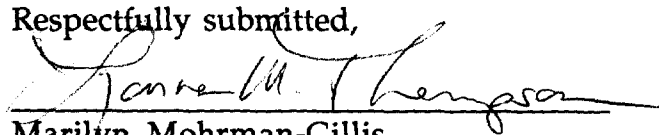
---

<sup>5</sup> H.R. Rep. No. 458, 104th Cong., 2d Sess. 113 (1996) ("Conference Report") at 132.

<sup>6</sup> Federal-State Joint Board on Universal Service, Report and Order, CC Docket 96-45 (rel. May 8, 1996), ¶ 431.

establish the very limited exemption for instructional programming requested in its petition.

Respectfully submitted,



Marilyn Mohrman-Gillis

Vice President, Policy & Legal Affairs

Lonna M. Thompson

Director, Legal Affairs

ASSOCIATION OF AMERICA'S PUBLIC  
TELEVISION STATIONS

1350 Connecticut Avenue, N.W.

Washington, D.C. 20036

202-887-1700

December 10, 1997

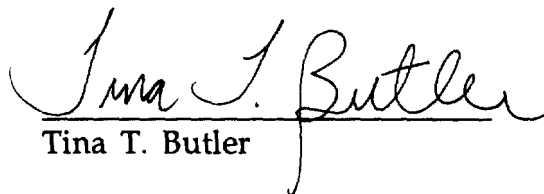
## Certificate of Service

I, Tina T. Butler, hereby certify that I have on this 10th day of December, 1997, sent via first-class mail, postage prepaid, copies of the foregoing APTS Reply to Oppositions to the Petition for Reconsideration to the following:

Karen Peltz Strauss  
Legal Counsel for Telecommunications Policy  
National Association of the Deaf  
814 Thayer Avenue  
Silver Spring, MD 20910-4500

Keith Muller  
League for the Hard of Hearing  
71 W. 23rd Street  
New York, NY 10010-4162

Dr. Elizabeth O'Brien  
Convention of American Instructors of the Deaf  
NTID/RID  
52 Lomb Memorial Drive LBJ 2230  
Rochester, NY 14623-0887

  
Tina T. Butler